

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LELAND SCHIMBERG,
MATTHEW SCHIMBERG, and CAMRIN
SCHIMBERG, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHELLE SCHIMBERG,

Respondent-Appellant,

and

LELAND SCHIMBERG, III,

Respondent.

UNPUBLISHED
September 2, 2003

No. 246434
Shiawassee Circuit Court
Family Division
LC No. 01-010115-NA

Before: Markey, P.J., and Cavanagh and Saad, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court's order terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(b)(ii), (c)(i), and (g). We affirm.

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 5.974(I), now MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, then the trial court must terminate the respondent's parental rights unless it determines that to do so is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review for clear error the trial court's decision with regard to the child's best interests. *Id.* at 356-357.

After vigilantly reviewing the record brought before us for review, we are satisfied that the trial court did not clearly err in finding that the statutory grounds for termination were

established by clear and convincing evidence. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). In the instant case, testimony established that respondent-appellant's husband, respondent Leland Schimberg, physically injured Matthew by placing a belt around the child's neck and choking him. Indeed, respondent-appellant admitted that her husband physically abused the children by administering disproportionate corporal punishment. Respondent-appellant acknowledged that the two older boys developed bed-wetting behaviors because of their father's abuse.

Moreover, testimony adduced during trial well demonstrated that respondent-appellant recognized that her husband was addicted to controlled substances as well as emotionally and physically abusive. However, notwithstanding his violence, respondent-appellant went to extraordinary lengths to keep her relationship viable. Consistent with her behavior, respondent-appellant unequivocally testified that her husband's health and well being was more important to her than her children. Because respondent-appellant could not extricate herself entirely from her husband, she thus continued to subject her children to his violent behavior.

Interestingly, respondent-appellant confidently testified at trial that she could control her husband's abusive conduct and thus protect her children whereas she was unsuccessful in the past, not because her husband successfully defeated his drug dependence or otherwise discovered more acceptable behavioral patterns, but rather because the extensive injuries that he sustained in an automobile accident rendered him physically unable to inflict physical abuse. Given this testimony, we are not persuaded that if the children were returned to her care and custody, respondent-appellant would protect them or otherwise place their well being above the needs of her husband.

Further, testimony well established that, despite many attempts in both Michigan and Florida, respondent-appellant was no closer to providing a stable living environment for her children at the close of the termination proceedings than she was when the FIA initially became involved. Indeed, after moving back and forth between Michigan and Florida numerous times, when this matter came up for trial, the children were living with their father's parents in Michigan while respondent-appellant and her husband were residing with his grandparents in Florida.

In addition, we find that the evidence produced did not demonstrate that termination of respondent-appellant's parental rights was antithetical to the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. Accordingly, the trial court did not err in terminating respondent-appellant's parental rights to her minor children and we thus affirm the trial court's decision in every respect.

Affirmed.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Henry William Saad